

By giving away tangible personal property in Illinois, the donor makes a taxable use of the property and is subject to Use Tax on the cost price of the property purchased to be given away. See 86 Ill. Adm. Code 150.305(c). (This is a GIL.)

July 23, 2008

Dear Xxxxx:

This letter is in response to your letter dated October 19, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Company A (hereafter referred to as 'Applicant'), respectfully requests a general information letter and submits the following information concerning its request:

I. Applicant Information:

Applicant is engaged in the business of marketing, selling, and distributing orthopaedic [sic] products and instruments, selling joint replacement systems and related products and services to hospitals and medical care facilities worldwide. Applicant is a subsidiary of Company B.

II. Issue:

Applicant submits this general information letter request concerning the following issue: When Applicant provides surgical instruments to its customers at no additional charge in conjunction with the sale of medical implants to those customers; does Applicant owe Illinois sales or use tax on the surgical instruments?

III. Facts:

Applicant entered into a distribution agreement with Company B under which it purchased surgical instruments used to install medical implants. The agreement requires that Company B sell the instruments to Applicant at cost. Once Applicant places an order, Company B removes the implants and surgical instruments from inventory located in Company B's warehouse and moves them to a packaging area for shipment to Applicant's customers' or sales representatives' location. Applicant takes title to these items in the packaging area and is responsible for final packaging and shipping.

Applicant sells the medical implants to its customers and occasionally sells the surgical instruments to its customers for a separately stated charge. However, in most cases, Applicant supplies the surgical instruments to its customers for no extra charge. In addition, Applicant provides its independent sales representatives a limited number of instruments at no charge for use by Applicant's customers. Applicant retains title to the surgical instruments and depreciates the surgical instruments for Federal Income Tax purposes.

The instruments provided at no charge must be returned to Applicant upon request. However, only on rare occasions are they returned to Applicant. The instruments generally have a life span of seven to ten years, and are only replaced if they are damaged or become obsolete.

In the past, Applicant has taken the position that its purchases of the surgical instruments from Company B are exempt from use tax because they are resold pursuant to 35 Ill. Comp. Stat. § 120-1 and Ill. Admin. Code tit. 86, § 130.120(c). The surgical instruments are not physically packaged with the implants. However, they are necessary for the installation of the medical joints and implants. Applicant's customers are not able to install the implants without the instruments, and therefore would not buy a medical implant if they could not use the surgical instruments. Although there is no direct charge for the instruments, the cost of the instruments is factored into Applicant's selling price for the implants.

Applicant is not presently under investigation or audit by the Department of Revenue. Applicant is not presently pursuing any protest, litigation or negotiation on the issue with the Department of Revenue. Applicant and its duly authorized representative have no knowledge of any other person, partnership, corporation or entity with an assessment, refund or protest on this issue pending before or with the Department of Revenue.

This general information letter request is being submitted by Applicant's representative on behalf of Applicant. If you have any questions regarding this general information letter request, or require additional information regarding the specific items at issue, please contact the undersigned.

DEPARTMENT'S RESPONSE

From the information you provided in your letter, we cannot tell what your client's contractual arrangements are in regards to whether the instruments are part of the purchase of the implants by its customers. At one point you indicate that your client "occasionally" sells the surgical instruments to its customer for a separately stated charge. If a retailer sells tangible personal property to a customer, transferring title, then the sale of that tangible personal property would generally be considered a sale at retail.

However, you also indicate that in most cases your client supplies the instruments to its customers for no extra charge, and your client retains title to the instruments. If a person transfers possession of tangible personal property that is located in Illinois but retains title, that person is still the owner of that property and incurs Use Tax liability on the use of that property in this State. You have also mentioned that there are occasions when the instruments are provided at no cost to independent sales representatives. When property is purchased and then given away, the donor has made a taxable use of the property by making such gift. Therefore, it is the donor of the gift who is deemed the end user of the property and who is subject to the Use Tax, rather than the donee. See 86 Ill. Adm. Code Section 150.305(c).

Use Tax liability is calculated on the cost price of the property used in this State or given away in this State. When the property is purchased at retail, the base for calculating Use Tax is the purchase price of the property. If, however, the property is a product produced by that person, the donor's Use Tax liability is calculated on that person's cost price of the materials and products purchased and incorporated into the finished product. See 86 Ill. Adm. Code Section 150.305(b).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

DMB:msk